IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 886 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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MOHAMMADBHAI HASAMBHAI KHATKI - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR FEROZ H PATHAN for Applicant(s) : 1,
MR AD OZA, LD.PUBLIC PROSECUTOR for Respondent(s) : 1,
MS JIRGA D JHAVERI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 31/01/2006

ORAL JUDGMENT

1. Heard Mr.Feroz Pathan, learned counsel appearing for the petitioner; Mr.A.D. Oza, learned Public Prosecutor, appearing on behalf of the respondent-State and Ms.Jirga Jhaveri, learned

counsel appearing for the respondent no.2.

2.1 I have carefully considered the contents of the FIR registered by Dhrangadhra Police Station on the strength of the complaint given by Mr.N.U. Jhala, Police Sub-Inspector, Dhrangadhra Police Station. It appears that when PSI Mr.Jhala was on his patrolling duty found two accused persons carrying about 14 sheep and goats in a goods carrier auto-rickshaw of model 'Atul Shakti' in a cruel manner. It is alleged that the said rickshaw was intercepted when the same was near village Rajpur and the persons named as accused i.e. Mohammadbhai Khatki and Mohammadbhai Badlani were in the vehicle. Mr.Jhala under suspicion that the said livestock was being carried to the slaughter house and that it was being carried in contravention of the Rules i.e. the Transport of Animals Rules, 1978, seized the muddamal sheep and goats and sent the same by way of an interim arrangement to Panjrapole after

obtaining orders from the concerned Court. The ld.Judicial Magistrate First Class, Dhrangadhra ordered to keep all the 14 sheep and goats with Panjrapole, Dhrangadhra. There is nothing on record to show that any of the animals was either sick or infectious with any disease.

2.2 The petitioner prayed for custody of muddamal under Section 451 of the Code of Criminal Procedure, 1973 before the ld.Judicial Magistrate First Class, Dhrangadhra but failed. His Revision Application also came to be rejected by the learned Additional Sessions Judge vide order dated 13th May, 2005. The present petition is for obtaining appropriate writ, order or direction under Article 227/226 of the Constitution of India.

3. Ms.Jirga Jhaveri, learned counsel appearing for the respondent no.2, while resisting the present petition submits that the order to keep the livestock seized with the Panjrapole is

absolutely legal and the same could not have been handed over to the accused carrying the livestock in violation of the scheme provided by Rules 65 to 75 of the aforesaid Rules.

4. When this petition was listed for hearing on 25th August, 2005, the Court was informed that out of total 14 sheep and goats, 5 sheep and 2 goats have died and the Panjrapole was supposed to explain as to how the said seven 7 sheep and goats died. Today the Court is informed that now only 5 sheep and goats survive and 9 sheep and goats have died. So without commenting upon the management of the Panjrapole, it is possible to observe that more than 50% livestock handed over by the Court by way of interim arrangement has not been there now for the reasons best known to the management of the Panjrapole. It is true that the management of Panjrapole had intimated the police but no formal postmortem note is prepared or produced before this Court and no cause of death of any of these 9 sheep

and goats is available on record. Ms.Jhaveri states that she can file affidavit in this regard. However, after a lapse of reasonable good period such explanatory affidavit would not help the Panjrapole management because the cause of death could have been given to the police when they informed about the death.

5. It is rightly argued by Mr.Firoz Pathan, learned counsel appearing for the petitioner, that probably all the sheep and goats would have survived with the petitioner and if would not have been handed over to the management of the Panjrapole. The arrangement for food and drinking water, etc. while transporting them has to be made but this would, obviously, depend on the distance between the two places i.e. place of loading the livestock in the vehicle and the ultimate destination. If the livestock is not in large number, it can be offloaded at any place in between. So the Court while dealing with the interim custody applications should

apply its mind from every angle. Mr.Pathan has drawn the attention of this Court to certain decisions of this Court and has argued that the claim of Panjarapole should not be considered as preferential claim merely because they are engaged in animal welfare activities. However, in the present case, there was no claim by Dhrangadhra Panjrapole but the ld.Judicial Magistrate First Class by way of an interim arrangement decided to hand over the custody of the animals to Dhrangadhra Panjrapole. The guidelines laid down by this Court in the case of ***Manager, Panjrapole, Deodar and another v. Chakaram Moraji Nat and another*** to some extent helps the petitioner. The say of Ms.Jhaveri before the Court is that the ratio of this decision would not help the petitioner. On the contrary, the decision in the case of ***State of U.P. v. Mustakeem and others, reported in 2002 (3) GLH UJ 8***, goes against the present petitioner. I would like to reproduce the relevant part of the said decision, which is as

under :

"The State of Uttar Pradesh is in appeal against the direction of the Court directing the release of the animals in favour of the owner. It is alleged that while those animals were transported for the purpose of being slaughtered, an FIR was registered for alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960, and the specific allegation in the FIR was that the animals were transported for being slaughtered, and the animals were tied very tightly to each other. The criminal case is still pending. On an appeal for getting the custody of the animals was filed, the impugned order has been passed. We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very

allegations and in view of the charges, which the accused may face in the criminal trial. We therefore set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes to take the entire responsibility of the preservation of those animals so long as the matter is under trial.

The appeal stand disposed of accordingly."

5. In one decision in the case of ***Tharad Jain Panjrapole v. Shaikh Salimbhai Daudbhai in Criminal Revision Application No.494 of 2000***, this Court has rejected the Revision Application filed by Panjrapole and the facts of the said case are materially similar to the present case. It is true that in the case of Tharad Jain Panjrapole (supra), there was no clear allegation that the livestock was being carried to the slaughter house. In the complaint in

question, such allegation is apparent.

6. The vehemence in the argument of Ms.Jhaveri is that the ratio of the decision reported in 2002(3) GLH UJ 8 (supra) would go against the present petitioner. It appears that as the FIR clearly reveals that two persons in one goods carrier auto-rickshaw were of the particular community (Khatkis), members of this community normally get employed in slaughtering activity, the complainant presumed that the livestock is being carried to the slaughter house. However, it appears that out of the said livestock, the Pajrapole was not able to save a good number of livestock. Now when only five sheep and goats survive, the interim custody of the same can be handed over to the petitioner without entering into further discussion so that in the event of conviction or other serious finding against the petitioner-accused is recorded, the same can be again handed over to the appropriate institution including the Dhrangadhra Panjrapole. Both the

lower Courts have not considered the distance between the loading of the livestock and interception of auto-rickshaw by the complainant. No good evidence is collected on this point. The member of Khatki community can trade in live-stock, which is a legal business. No adverse presumption should be drawn by Investigating Officer in absence of positive evidence in such cases. On stringent conditions, the animals ought to have been handed over to the owner of the livestock and that arrangement even can be worked out today.

2. Mr.Pathan, learned counsel appearing for the petitioner, states that the petitioner is ready to abide by any condition that can be imposed by this Court in respect of the same.

3. So in view of above discussion and facts and circumstances of the case emerging from record, the present petition is hereby allowed accordingly. The order under challenge is hereby

quashed. The respondent-Panjrapole is hereby ordered to hand over the interim custody of the surviving sheep and goats (five in number) ot the petitioner by putting identification mark on each animal at the cost of the petitioner and with a certificate of the veterinary doctor attached to the Panjrapole as to the health of each animal.

4. It is clarified that the petitioner is under obligation to produce the same livestock as and when asked by the Court and he shall see that they are kept in a good shape and healthy condition. The petitioner shall disclose the place where the said livestock is to be kept. In the event of natural death, the petitioner firstly shall intimate to the concerned Court and the concerned Police Station and, only thereafter he shall dispose of the body of the deceased animal. It is clarified that this arrangement is an interim arrangement under the scheme of Section 451 Code of Criminal

Procedure, 1973 and not the order of disposal of muddamal on merit.

Order and direction accordingly. Direct Service is permitted.

(C.K. Buch, J)

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